# INDEX


| | Page |
|---|---|
| Opinions below | 1 |
| Jurisdiction | 2 |
| Question presented | 2 |
| Statute involved | 2 |
| Statement | 3 |
| A. The findings of the special master | 3 |
| B. The conclusions of the special master and the court below | 7 |
| Argument | 9 |
| Conclusion | 10 |


## CITATIONS

Cases:


| | |
|---|---|
| *H. K. Porter* v. *National Labor Relations Board*, 397 U.S. 99 | 9 |
| *H. J. Heinz* v. *National Labor Relations Board*, 311 U.S. 514 | 9 |


Statute:


| | |
|---|---|
| National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) | |
| Section 8(a)(1) | 2 |
| Section 8(a)(5) | 2 |

# In the Supreme Court of the United States

OCTOBER TERM, 1970

---

No. 1019

RALPH PRINTING & LITHOGRAPHING COMPANY,
PETITIONER

*v.*

NATIONAL LABOR RELATIONS BOARD

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

---

## BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

---

### OPINIONS BELOW

The opinion of the court of appeals in the present contempt proceeding (Pet. App. 15-24) is not yet reported. The opinion of the Special Master (Pet. App. 25-60) is not reported. The court of appeals' earlier opinion enforcing, as modified, the Board's unfair labor practice order (158 NLRB 1353) is reported at 379 F. 2d 687.

## JURISDICTION

The civil contempt judgment of the court of appeals (Pet. App. 61-63) was entered on October 29, 1970.[1] The petition for a writ of certiorari was filed on November 28, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTION PRESENTED

Whether the finding of the Special Master that the company and union had agreed to the terms of a bargaining contract which the company then refused to execute was clearly erroneous.

## STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are:

> Sec. 8(a) It shall be an unfair labor practice for an employer—
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
>
> • • • •
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

---

[1] On November 6, 1970, the court of appeals denied petitioner's request for a stay of the contempt judgment pending the filing and disposition of a petition for a writ of certiorari (Pet. 1).

## STATEMENT

### A. The Findings of the Special Master

On July 6, 1967, the court of appeals (379 F. 2d 687) enforced the order of the National Labor Relations Board (158 NLRB 1353, 1365) requiring the Company to bargain collectively with the Lithographers and Photoengravers International Union, AFL-CIO, Local 38, and to embody any understanding reached in a written agreement. On June 16, 1968, the Board filed a petition for adjudication in civil contempt, alleging that the Company had violated the court's decree by (1) failing and refusing to negotiate in good faith with the Union; (2) granting unilateral wage increases to certain employees in the unit without first notifying or consulting with the Union; and (3) refusing to execute a written contract incorporating the terms of a final agreement with the Union, negotiated on behalf of the Company by its attorney. The court of appeals appointed District Judge Van Pelt as Special Master; on October 2, 1969, he filed his report, finding that the allegations in the contempt petition were true and recommending that the Company be adjudged in civil contempt of the court's decree. The Company here challenges only the findings respecting its refusal to execute the contract. The relevant facts relating to that issue are as follows:

Bargaining commenced on October 3, 1967, with the Union represented by International Representative Mel Galbraith, Local President Dale Bahn, and a group of Company employees; the Company was

represented throughout the negotiations by its attorney, John E. Tate (Pet. App. 26). At the October 3 meeting, the Union presented a draft document which set forth its opening proposals, reserving the right to have its International President finally approve any agreement reached (Pet. App. 27; Tr. 29-30).[2] Tate rejected the Union's proposals, and at the second bargaining session on October 18 submitted the Company's counterproposal. This document stated: "if terms agreed to in bargining sessions are subject to acceptance or rejection of Union members later then this Company officialdom reserves the same right of final acceptance or rejection of the terms entered into here by its negotiator. If the word of the Union representatives here is final then so is that of the Company negotiator" (Pet. App. 27, Ex. 4). Tate made it clear, however, that this reservation was conditional, that he was in fact authorized to enter into a contract with the Union if he so chose (Pet. App. 27-28; Tr. 43, 153, 158-159, 170, 390). Two more meetings were held, and by January 3, 1968, agreement had been reached on a number of items (Pet. App. 28; Tr. 36-39).

On March 6, 1968, the parties met for the fifth bargaining session; the Union was represented by International Vice-President Ted Brandt (Pet. App. 28). The Union presented a document entitled "Union's proposed solution for settling entire contract" (Pet. App. 28; Tr. 51, Ex. 8). It provided

---

[2] "Tr." references are to the transcript of proceedings held before the Special Master; "Ex." references are to the joint exhibits stipulated by the parties before the Master.

that all terms previously agreed upon were to be incorporated in a contract; the items still in dispute were to be settled in a "package", with the Union accepting certain outstanding Company offers (such as funeral leave) and agreeing to others with minor changes, and the Company in return adopting an apprenticeship program and job classification wage scales. (Pet. App. 28-29; Ex. 8.) Brandt stated that he had authority to sign such an agreement from the Union's International President (Pet. App. 28; Tr. 176-179); however, Tate refused to agree to job classification wage scales, and, though the Union offered to drop several of its demands, the meeting ended with wage scales, vacations, and holidays still in dispute. (Pet. App. 28-29; Tr. 45-47).

Immediately after the March 6 meeting, the employees voted to drop all their remaining demands, including job classification wage scales, and accept the contract offered by the Company (Pet. App. 30; Tr. 47-48). Union representatives Bahn and Brandt obtained authority from the International Union to accept the Company's terms, and Bahn told Tate's secretary to inform Tate that the Union was ready to sign a contract (Pet. App. 30; Tr. 48-50). On March 7, Company President Joe Peer posted the following notice on the Company bulletin board: "Our attorney has advised us that in negotiations last night the Union capitulated on all remaining contract points except job classification. It looks now as though the Union will give in on that point as well, and we may have a 3 year Union contract signed in the near future" (Pet. App. 29; Tr. 272, 404, Ex. 10).

On March 12, Bahn, not having heard from Tate, wrote him a letter again stating that the Union was ready to sign a contract incorporating only those terms to which the Company had agreed. Tate replied that he had "no idea" what Bahn was talking about (Pet. App. 30; Tr. 51-52); however, on March 20, Tate agreed by telephone to draft a completed contract for signature on March 28 which would embody the agreed terms (Pet. App. 30-31; Tr. 53). In a letter requesting that the contract signing be postponed until April 2, Tate repeated his intention to "have completed in final form the contract as I understand it" (Pet. App. 31; Tr. 397, Ex. 12). On March 28, Tate wrote to Bahn to confirm his understanding that the Union had agreed to drop all its outstanding demands, including apprenticeships, job classification, "interval President approval," and any other item not already included in the contract (Pet. App. 31; Ex. 13). His secretary also sent Bahn a draft contract under cover of a letter which read: "I surely hope I understand Mr. Tate's notes correctly. He is in San Diego, but he asked me to send you a final draft for signature at the Tuesday night [April 2] meeting" (Pet. App. 31; Ex. 14, 16; Tr. 54-55, 398-401).[3]

On April 2, Tate refused to execute the contract, though it had been signed by Union Vice President Frank Culton and by Bahn, and Bahn had informed

---

[3] Copies of the letter and contract were also sent to Company President Joe Peer, who not only read them both, but discussed them with Company owner Clifton Batchelder (Pet. App. 31; Tr. 283-287).

Tate that he had final authority to bind the Union. Tate stated, for the first time, that he had no authority to sign for the Company but would submit the contract to owner Clifton Batchelder, who would give the Union an answer within 48 hours (Pet. App. 31-32; Tr. 61-62, 139, 392-393).

This period closed without word from the Company. Bahn then telephoned Tate's office and left a message that Tate call him; Tate failed to do so. On April 10, Bahn spoke with Company President Joe Peer, and the two met on April 12 to discuss the contract (Pet. App. 32; Tr. 62-66, 225-227). During this discussion, Peer voiced his disapproval of the Health and Welfare clause in the contract; Bahn replied that he had no authority to make any changes in the document and urged Peer to persuade Batchelder to sign it (Pet. App. 32-33; Tr. 67-69, 226-229). On April 16, Tate sent the Union a letter seeking to reopen negotiations on both the Health and Welfare clause and the Union's earlier job classification proposal. The Union did not respond. (Pet. App. 33; Ex. 18.)

### B. The Conclusions of the Special Master and the Court Below

The Special Master held (Pet. App. 55):

> * * * that an agreement had been reached, that the Union had signed and that the authorized agent of the Company refused to sign, stating instead that he would seek the approval of Mr. Batchelder (Tr. 62, 392). Further, it appears that Mr. Batchelder refused to sign the agreement and that after a delay of fourteen days the Company responded with a counter offer (Ex-

hibit 18). Finally, it should be noted that the counter offer (Exhibit 18) did not mention or allude to any of the issues which the Company claims were still in dispute as of April 2, 1968. Instead, it stated that the ". . . company is willing to finalize the agreement. . ." if the Union will accept 50% Company contribution to the Health Insurance program in exchange for the Company granting the Union's requested job classification proposal. In these circumstances it must be concluded that the Company refused to sign and in fact partially repudiated the previously reached collective bargaining agreement and thereby violated the specific requirement of the decree of the Court of Appeals ordering them to bargain collectively with the employees' representative.[4]

The court of appeals upheld the Master's findings and conclusions, stating that, "[a]lthough the evidence is in conflict * * *, the Master's findings of fact are binding upon this court unless clearly erroneous. * * * There is ample evidence to support the Master's conclusion, and we cannot therefore say that his findings are clearly erroneous" (Pet. App. 22). The court accordingly adjudged the Company in civil contempt of its earlier degree and ordered it, *inter alia*, to notify the Union that, upon its request, "it will execute the agreement concluded in April 1968" (Pet. App. 23).

---

[4] The Master further concluded that (1) Attorney Tate had actual and/or apparent authority to negotiate and sign a binding contract on the Company's behalf (Pet. App. 45-48); and (2) the April 2 document which Tate refused to execute contained all the terms of a completed, final agreement between the Company and the Union (Pet. App. 49-54).

## ARGUMENT

Petitioner's basic contention here is that the order of the court below conflicts with *H. K. Porter* v. *National Labor Relations Board*, 397 U.S. 99, for it requires the Company to accept substantive contract provisions which were not agreed to in collective bargaining. That issue is not presented here. The Special Master found that the Company refused to execute a contract whose terms had in fact been agreed to by both parties. See *H. J. Heinz Co.* v. *National Labor Relations Board*, 311 U.S. 514. Accordingly, the only issue presented is whether the court of appeals properly concluded that there was "ample evidence" to support the Master's finding. Such an evidentiary issue does not warrant further review by this Court. In any event, the facts summarized above show that the court of appeals correctly resolved it.[5]

---

[5] The Master discredited Tate's testimony (Tr. 379-380) that no final agreement had ever been reached and that, as of April 2, 1968, there were numerous points still in dispute. Union President Bahn testified (Tr. 86-97) that the items referred to by Tate, most of which related to early Company demands, were either dropped or bargained away during the course of the negotiations.

## CONCLUSION

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
*Solicitor General.*

ARNOLD ORDMAN,
*General Counsel,*

DOMINICK L. MANOLI,
*Associate General Counsel,*

NORTON J. COME,
*Assistant General Counsel,*

LINDA SHER,
*Attorney,*
*National Labor Relations Board.*

JANUARY 1971.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1970 413433 418